

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.24149 OF 2006

BETWEEN:

-

S.Lavanya Rani daughter of S.Kumara Swamy

...Petitioner

vs.

A.P.State Financial Corporation, rep. By its General Manager, Chirag-
Ali-Lane, Hyderabad and another

..Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.24149 OF 2006

ORAL ORDER

-

The petitioner seeks a declaration that the action of the respondents, in proceeding with sale of the petitioner's immovable property without issuing any notice or affording opportunity to the petitioner, is illegal and violative of natural justice.

One Dr.T.Venugopal Rao availed a loan of Rs.3,00,000/- on 11-12-2002 and Rs.8,25,000/- on 17-02-2003 and Rs.13,09,000/- on 22-07-2003 from the A.P. State Finance Corporation. For the total loan amount of Rs.24,34,000/- Dr.T.Venugopal Rao provided a collateral security *inter alia* of a property of 370 square yards in Sy.No.3/D&4/D, Kakatiya Colony, Hanmakonda, Warrangal district belonging to the petitioner. The petitioner admittedly stood guarantor for the loan obtained by Dr.T.Venugopal Rao and had provided the collateral security of her property. Dr.T.Venugopal Rao defaulted on payment of the loan instalments. Not only that, he also abandoned the project for which the loan was obtained.

The respondents thereupon issued notices to all the collateral security holders including the petitioner on 15-03-2004 calling upon them to remit the loan amount failing which the property offered as collateral security would be put to sale in exercise of the powers available to the respondent-Corporation under Sec.29 of the State Financial Corporation Act,1951. The notice (it is stated in the counter-affidavit) was acknowledged by the petitioner. Through a letter

dated.05-07-2005 the petitioner also represented to the General Manager of the Corporation that she intends to pay the amount. The petitioner however did not pay any amount. Thereupon notices dated.10-10-2005,3-02-2006 and 28-08-2006 were issued to the petitioner informing her about the proposed sale. The petitioner did not respond. In the circumstances in view of the available power under Sec.29 of the State Financial Corporation Act,1951 the respondent-Corporation issued sale advertisement on 23-03-2004,02-04-2005 and 07-12-2005, 03-02-2006 and 16-08-2006 in respect of various properties offered as collateral security for the loan availed by Dr.T.Venugopal Rao. Insofar as the petitioner's property is concerned, pursuant to the sale notification dated.16-08-2006, the 3rd respondent (impleaded today) is stated to have bid Rs.15.50 lakhs. This bid was accepted by the Corporation and on 12-10-2006 sale letter was issued to the 3rd respondent accepting his offer for the petitioner's property put on sale by the respondent-Corporation.

In the writ petition the petitioner specifically pleads in paragraph No.3 " However, at no point of time I was issued with any notice by the respondents for payment of loan amount as a guarantor for Dr.T.Venugopal Rao". The same allegations and assertions that no notice whatsoever were issued to her regarding the liability to pay the amount or sale of the property is reiterated in paragraph No.4.

In the counter-affidavit the respondent-Corporation specifically asserts that several notices were issued to her and the petitioner also by a letter dated.05-07-2005 represented to the General Manager of the respondent-Corporation that she intends to pay the amount. Curiously in a reply affidavit filed on 30-11-2006 the petitioner is silent on the averments in the counter-affidavit that a notice dated.08-03-2004 was issued to her as well as the other assertions in the counter that she herself through a letter dated.05-07-2005 agreed to repay the

amounts. The reply affidavit proceeds to plead that the petitioner is willing to pay if the respondents fix a reasonable amount.

In the light of the petitioner's failure to rebut the assertions in the counter-affidavit that she was issued a notice on 08-03-2004 to pay of the liabilities of Dr.T.Venugopal Rao in accordance with the guarantee offered by her and on the basis of the collateral security offered by her as also the non-traverse of the averments in the counter-affidavit that she herself had through a letter dated.05-07-2005 agreed to make payments, the inference is irresistible and compelling that the petitioner has come to this Court swearing to a state of facts which is untrue and thereby litigated *mala fide*. Mandamus is a discretionary relief and is not available to the persons who come to the Court with un-clean hands.

In the circumstances the writ petition deserves to be dismissed and is accordingly dismissed. In the circumstances no order as to costs.

GODA RAGHURAM,J

6TH DECEMBER 2006

***TSNR**